IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 14491 of 2006
Date of decision: September 26,2006

Tejaswini Sidhu V. State of Punjab

CORAM: HON'BLE MR.JUSTICE VINEY MITTAL
HON'BLE MR. JUSTICE H.S.BHALLA

Present: Shri B.B.S.Sobti, Advocate for the petitioner.
Shri Sukhdip Singh Brar, Additional Advocate General,Punjab, for respondents No.1 and 2.
Shri D.S.Patwalia, Advocate for respondents No.3,4 and 5.
Shri Atul Nehra, Advocate for respondents No.6 and 7.
Shri M.S.Guglani, Advocate for respondent No.8.
Shri Pawan Mutneja, Advocate for respondent No.9,Abinav Mutneja (also arrayed as respondent No.10.)

Viney Mittal,J.

Petitioner, Tejaswini Sidhu, has approached this court challenging the selection/admission granted to Abinav Mutneja (arrayed as respondent No.9 and 10 in the present petition) in M.B.B.S. Course in NRI Category 'B' (NRI sponsored candidate category) in Christian Medical College and Hospital, Ludhiana. A further prayer has been made for issuance of direction to the aforesaid college for selecting and admitting the petitioner in the said Course in the said NRI Category 'B'. The aforesaid challenge has been made by the petitioner with the averments that she has better merit than respondent, Abinav Mutneja. A direction has also been sought against Baba Farid University of Health Sciences not to recognise the admission of Abinav Mutneja and not to register the aforesaid admission but on grant of admission recognise the admission of the petitioner in the said Course.

It has been averred by the petitioner that she passed

her Senior Secondary examination securing 91.06% marks as per the detailed mark sheet dated May 23,2006 from Central Board of Secondary Education. The petitioner thereafter sought admission in Christian Medical College and Hospital, Ludhiana,respondent No.3, in NRI sponsored category. It has been claimed by her that for the aforesaid purpose she obtained the requisite eligibility certificate from Baba Farid University of Health Science, respondent No.6. The petitioner claims to have submitted her application form on the prescribed proforma, as available in the prospectus 2006, for admission to M.B.B.S. 2006 Course against NRI Category. Since the petitioner was seeking admission in NRI Category, therefore, she was not required to take any entrance test. As per prospectus, admission against NRI Category to MBBS Course in the College was to be made on the basis of the merit obtained by an applicant in 10+2 or equivalent examination. The only eligibility required for applicant seeking admission to MBBS course was that he or she must have obtained not less than 50% marks in English and 50% marks in Physics, Chemistry and Biology together. The petitioner claims that she was duly eligible as per the aforesaid eligibility conditions.

According to the petitioner, the applicants in NRI category seeking admission to the Christian Medical College and Hospital, Ludhiana were bifurcated into two categories i.e. 'A' and 'B'. The candidates in category 'A' were such applicants who are actually NRIs, whereas candidates who were sponsored by NRIs were to be placed in category 'B'. The college had prepared the merit list on the basis of the marks of the candidates obtained in 10+2 or equivalent examination. According to the petitioner in category 'A', 19 candidates were listed. The first candidate in the

merit list was having 94.41% marks whereas the last candidate in category 'A' was having 57.66% marks. 12 candidates were indicated in category 'B'. The petitioner was placed at serial No.1 in category 'B' and was shown to have obtained 90% marks whereas the last candidate listed in the said category was shown to be having 58% marks. The total seats available in NRI category ('A' and 'B') were only 7. It was stipulated that in case 7 eligible candidates from category 'A' were not available, then the candidates from category 'B' were to be considered.

The petitioner maintains that as per the schedule of admission process, the date of first counselling of NRI category was fixed as July 17,2006. All the candidates/applicants were required to report on the said date from 9.00 a.m. to 1 .00 p.m. whereas the candidates in the waiting list were required to report at 2.00 p.m. on the same day. The petitioner claims that she was present at the time of counselling on July 17,2006 and insisted upon the College authorities to mark her presence but she was informed that since 7 candidates from category 'A" were already available ,therefore, there was no necessity of marking her presence. According to the petitioner, she was informed that all the seats in the said course against NRI category had been filled up.

The petitioner claims that she was very keen and interested in getting admission in Christian Medical College and Hospital, Ludhiana and, therefore, she kept on making enquiries for any further counselling. She came to know that a further counselling was scheduled for August 11,2006. Consequently, the petitioner claims to have reached the respondent-Medical College on August 11,2006. At that point of time, she claims to have been informed that all the seven seats in the NRI category had already been filled up

from category 'A' and there being no vacant seat, no counselling for any NRI candidate would be held on the aforesaid date. Consequently, the petitioner claims to have come back. The petitioner has also alleged that the practice and procedure being adopted by the respondent-Medical College was doubted by the petitioner and, as such, she had already written a communication to the Principal of the respondent-College on July 27,2006, wherein she had specifically requested that in case there was likelihood of any vacant seat against NRI category, then in that situation the petitioner was willing to be admitted against the said vacancy. The petitioner also requested the Principal of the College to notify her, if any seat fell vacant. For the aforesaid purpose, the petitioner even gave her residential address. A copy of the aforesaid communication has been appended as Annexure P/6 with the present petition.

The petitioner claims that she did not receive any response from the College in this regard but later on learnt that Abinav Mutneja (arrayed as respondent No.9 and 10) had been admitted against NRI category 'B'. According to the petitioner, the aforesaid candidate Abinav Mutneja was shown at rank No.3 in category 'B', having obtained 82.33% marks, whereas the petitioner was shown at rank No.1 in NRI category 'B' with 90% marks. On that basis, the petitioner has maintained that selection/admission of Abinav Mutneja, who was concededly lower in merit than the petitioner, in preference to the claim of the petitioner is absolutely illegal,unjustified and liable to be set aside. In these circumstances, the petitioner has approached this court through the present petition.

The claim of the petitioner has been contested by the respondents. Two separate written statements have been filed. One written statement has been filed by the respondent-College on behalf

of respondents No.3 to 5. A separate written statement has been filed by Abinav Mutneja the selected candidate.

In the written statement filed by the College,respondent No.3, the ranking of the petitioner vis-a-vis Abinav Mutneja, has not been disputed. It has not been disputed that Abinav Mutneja was having lessor marks than the petitioner. However,the claim of the petitioner has been contested by the College on the plea that the first counselling for admission to M.B.B.S. Course in NRI Category was held on July17,2006. Thereafter on July 18,2006, a notice for further counselling for MBBS/BDS/BSC Nursing admission for NRI category was put up on the website of the College, as well as Notice Board of the College. A copy of the aforesaid notice has been appended as annexure R3/1 with the written statement. As per the aforesaid notice, it was stipulated by the College that if there were any vacancies in MBBS Course in the NRI category, the counselling would take place on August 11,2006 and thereafter the third counselling would be held on August 31,2006 and the consequential vacancies, if any, would be filled up by September 14,2006 and September 30,2006. The respondent-College has maintained that the aforesaid notice was well within the knowledge of the petitioner, inasmuch as, in pursuance of the aforesaid admission , counselling schedule, as indicated in the notice, the petitioner had duly appeared for counselling on August 11,2006. However, at that point of time , no vacancy was available for grant of any further admission. However, one Rahul Bhandari who was indicated at serial No.1 in the merit list and had been admitted on July 17,2006, was declared as ineligible by the respondent-University. A communication in this regard was received by the College on August 30,2006. In these circumstances, one seat had become vacant in MBBS course in the

NRI category on the aforesaid date i.e. August 30,2006. As per schedule already indicated, third counselling was held on August 31,2006. On the aforesaid date, no candidate in category 'A' came present. The petitioner was not present on the aforesaid date, although,as per the respondents, she was very well aware of the date of the third counselling scheduled for August 31,2006, therefore, the candidature of student at serial No.2 in category 'B' namely, Prabjit Singh Gill, was considered but since his certificates/testimonials were not found to be in order, therefore, he was not granted admission . It was only thereafter that the next candidate being Abinav Mutneja was granted admission in the said category. On the basis of the aforesaid fact, respondent-College has maintained that the petitioner having absented herself from counselling on August 31,2006, was not entitled to be considered on the aforesaid date and as such, cannot be heard to make any grievance against the grant of admission to Abinav Mutneja.

In addition, respondents have maintained that as per their information the petitioner had already taken admission in Adesh Institute at Bhatinda which is also a medical College affiliated with Baba Farid University and Health Sciences, and having commenced her studies at the said college, was no more interested in appearing for counselling for August 31,2006. According to the respondents, the challenge made by the petitioner to the admission granted to Abinav Mutneja has been made merely as an after-thought.

To the similar effect are the pleas raised by Abinav Mutneja in the separate written statement.

We have heard the learned counsel for the parties at some length and with their assistance have also gone through the

record of the case.

The facts with regard to the comparative merit of the petitioner vis-a-vis Abinav Mutneja respondent are not in dispute. The only controversy which arises for determination is as to whether the petitioner having not been present at the time of counselling on August 31,2006, could still be heard to challenge the admission granted to Abinav Mutneja, who had been so admitted on the aforesaid date.

The respondent-College has appended a copy of the Prospectus-cum- Application Form for 2006 Admission as Annexure R3/2. The aforesaid prospectus specifically stipulates that provisional merit list for NRI admissions would be prepared on the basis of the marks obtained by the applicants in the qualifying examination and will be displayed on the Notice Board of Registrar's office and would also be published on the website of the College. It has specifically been provided that failed,absent candidates or those found ineligible would not be informed separately. The prospectus also stipulates that if the seat allowed to a candidate is not claimed by payment of full college fees for the year 2006-07 by the stipulated date and time by the selected applicants or their representatives, the offer will be withdrawn and the seat would be offered to the next applicant in order of merit. Failed candidates, absent candidates or those found ineligible would not be informed separately.

Shri BBS Sobti, learned counsel appearing for the petitioner has vehemently argued that the petitioner had duly appeared for conselling on July 17,2006, when on account of the fact that all the seats in NRI Category were filled from NRI Category 'A', the petitioner was not admitted. According to the petitioner, she had on some information made available to her, had appeared for

counselling on August 11,2006 as well. Even at that point of time, no vacancy was available for being filled up from category 'B'. Consequently, the petitioner could not be admitted on the aforesaid date also. However, the petitioner maintains that she had no further information with regard to any counselling for August 31,2006 and as such could not be denied admission when a seat had become available.

However, the respondents along with the written statement, have appended a copy of the notice as Annexure R3/1, wherein the entire schedule of counselling was indicated. The second counselling was scheduled to be held on August 11,2006 whereas the third counselling was to be held on August 31,2006. Consequential vacancies (if any) arising from 31st August to 30th September were required to be filled by way of counselling on September 15,2006 and September 30,2006. In these circumstances, when the petitioner on her own showing appeared in 2nd counselling held on August 11,2006, then it is not comprehensible as to how she can claim ignorance of third counselling scheduled for August 31,2006. A specific case set up by the respondent is that the entire schedule for counselling had been notified through the aforesaid notice Annexure R3/1, wherein the second counselling was scheduled for August 11,2006 and the third counselling was scheduled for August 31,2006. In these circumstances, when the petitioner had appeared for second counselling on August 11,2006, it has to be inferred that she knew of third counselling scheduled for August 31,2006 also, but had chosen not to appear at the time of counselling, for the reasons best known to her. May be because of the fact that she had already been admitted to Adesh Institute at Bhatinda, she had lost interest.

However, that would be a matter which would be within the exclusive knowledge of the petitioner and we would not like to offer any comments thereupon.

We have already taken note of the plea raised by the respondents that on July 17,2006 all seats in NRI category stood filled from category 'A' only. In these circumstances, the petitioner could not be considered for admission on the aforesaid date. Even at the time of second counselling on August 11,2006, no vacancy was available in the said category. The petitioner, though appeared on the aforesaid date, could not be admitted. However, a vacancy had become available to the respondent-College on August 30,2006, when admission granted to one Rahul Bhandari on July 17,2006 was cancelled. In these circumstances, the aforesaid seat was required to be filled up in the counselling scheduled for August 31,2006. The candidature of one Parabjit Singh Gill, who was placed at serial No.2 in category 'B', was considered at the first instance. However, his testimonial/certificates were not found in order. Consequently,he was denied admission. Abinav Mutneja being next in merit was granted admission. We do not find any fault with the procedure adopted by the respondent-College.

To be fair to the learned counsel for the petitioner, two judgments relied upon by him in support of the claim made must be noticed. Learned counsel has relied upon a Division Bench judgment of this court in Randhir Singh V. Chandigarh Administration and others 1993(1) Recent Services Judgments 695 and a single bench judgment of this court in Nishu Bala V. Punjabi University 2000(2) R.S.J. 140.

We have duly considered the aforesaid judgments also but find the same are not applicable to the facts and circumstances

of the case.

In Randhir Singh's case, in the peculiar facts and circumstances of that case, it was observed by the Divi;ion Bench of this court that since the petitioner in the aforesaid case was always available in the office of the Principal ,therefore, the grant of admission, to a person lower in merit was not justified.

Similarly in Nishu Bala's case (supra) also, it was noticed by this court, again on facts and circumstances of that case, that plea raised by the respondent-College that a notice was put on the Notice Board was doubtful. It was in these circumstances that it was observed that it would not be fair and just to deprive candidates of their right of admissions by recourse to such indefinite method of admission.

However, as noticed in the above portion of the judgment, in the present case the prospectus specifically provided that the merit list of NRI candidates for admission was to be prepared on the basis of the marks obtained by the applicants in the qualifying examination and was to be displayed on the notice board of the office of the Registrar and was also to be published on the website of the College. It was specifically stipulated that no information would be supplied separately to failed, absent candidates or those found ineligible. Once the said procedure for admission had been followed by the College by putting up notice on the notice board as well as on the website to which all the applicants had free access, it cannot be accepted that the petitioner had no knowledge of the date of counselling scheduled for August 31,2006. It is apparent that the aforesaid plea has been raised by the petitioner merely with a view to support her claim.

In view of the facts and circumstances, as noticed

above, when the petitioner was not present at the time of counselling on August 31,2006, and her claim was not considered and on account of her absence, and the admission was granted to the next available candidate in accordance with law, we find no fault with the same.

Consequently, the present petition is devoid of any merit. The same is dismissed.

(Viney Mittal)
Judge

September 26,2006
sks

(H.S.Bhalla)
Judge